

## **COMAR 31.15.11 Use of Credit Information in Underwriting and Rate Making**

### **.01. Purpose.**

A. The Insurance Commissioner finds that insurers are increasingly using credit reports and credit scores, in some cases obtained from third parties, for the purpose of underwriting and rate making.

B. The purpose of this chapter is to require insurers that use credit reports or credit scores for underwriting or rate-making purposes, with respect to personal lines of property and casualty insurance, to provide the Insurance Commissioner with the underlying information that the Insurance Commissioner needs to ensure that the insurers use the credit reports or credit scores in accordance with the standards for underwriting and rate making that currently exist in Maryland law.

C. This chapter also requires insurers that use credit reports or credit scores for certain adverse actions, with respect to personal lines of property and casualty insurance, to notify consumers of the actual reason for the adverse action in accordance with current Maryland law.

## **.02 Scope.**

### **A. Insurance.**

This chapter applies to personal lines of property and casualty insurance.

### **B. Insurers.**

This chapter applies to each property and casualty insurer that uses credit reports or credit scores for:

(1) Underwriting purposes, including declinations and placement with a particular insurer within a group of affiliated insurers; or

(2) Rate-making purposes, including determinations that result in surcharges or tier placement within an insurer.

### **C. Insurance Transaction Not Initiated by a Consumer.**

(1) This chapter does not apply to the use of a credit report or credit score by an insurer in an insurance transaction that:

(a) Is not initiated by a consumer; and

(b) Consists of a firm offer of insurance.

(2) If an insurer refuses to underwrite after a consumer submits an application in response to a firm offer of insurance made in accordance with §C(1) of this section, the refusal to underwrite:

(a) Is not part of a transaction that is not initiated by a consumer; and

(b) Is subject to this chapter and any provisions of the Annotated Code of Maryland that are applicable to underwriting, including Insurance Article, §27-501, Annotated Code of Maryland.

D. Accuracy or Completeness of Information in Credit Report.

This chapter does not apply to a dispute regarding the accuracy or completeness of information in a credit report.

**.03 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Affiliated insurer” means an insurer that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another insurer.

(2) “Control” means the direct or indirect possession of the power to direct, or cause the direction of, the management and policies of an insurer, regardless of whether the power is exercised, by:

(a) Ownership of voting securities or of securities convertible into voting securities;

(b) Contract, other than a commercial contract for goods or nonmanagement services; or

(c) Any other means.

(3) “Credit criterion” means information bearing on a particular aspect of an individual’s credit history.

(4) Credit Report

(a) “Credit report” means any written, oral, or other communication of any information by a consumer reporting agency that:

(i) Bears on a consumer's credit worthiness, credit standing, or credit capacity; and

(ii) Is used or collected or expected to be used or collected wholly or partly to serve as a factor in establishing the consumer's eligibility or pricing for personal lines of property and casualty insurance to be used primarily for personal, family, or household purposes.

(b) "Credit report" does not include:

(i) An accident history report as defined in Insurance Article, § 27-216(e), Annotated Code of Maryland;

(ii) An accident history report or record of motor vehicle violations kept by the Motor Vehicle Administration pursuant to Transportation Article, § 16-117, Annotated Code of Maryland;

(iii) A property loss report or claims history that does not include information that bears on a consumer's credit worthiness, credit standing, or credit capacity; or

(iv) Any report containing information solely as to transactions or experiences between the consumer and the person making the report.

(5) "Credit Score" means a score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.

(6) "Firm offer of insurance" has the meaning stated in §C of this regulation.

(7) “Tier” means a category within a single insurer into which insureds with similar risk characteristics are placed for purposes of determining a premium rate.

C. “Firm offer of insurance” means an offer of insurance to a consumer that:

(1) Will be honored if the consumer is determined, based on information in a credit report on the consumer, to meet the specific criteria used to select the consumer for the offer; and

(2) May be further conditioned on one or more of the following:

(a) A determination, based on information in the consumer’s application for insurance, that the consumer meets specific criteria that:

(i) Bear on insurability; and

(ii) Were established before selection of the consumer for the offer and for the purpose of determining whether to extend insurance pursuant to the offer;

(b) Verification:

(i) That the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a credit report on the consumer, information in the consumer’s application for the insurance, or other information bearing on the insurability of the consumer; or

(ii) Of the information in the consumer’s application for insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability; or

(c) Provision by the consumer of any collateral that is a requirement for the extension of the insurance that was:

(i) Established before selection of the consumer for the offer of credit or insurer; and

(ii) Disclosed to the consumer in the offer of insurance.

#### **.04 Obtaining Credit Information.**

##### **A. In General.**

An insurer or an agent of an insurer may not obtain a credit report or credit score for an applicant or insured unless the insurer or agent obtains a credit report or credit score:

(1) For each applicant or insured of the insurer; or

(2) In accordance with a written standard for determining when to obtain a credit report or credit score that meets the requirements of § B of this regulation.

##### **B. Written Standard.**

A written standard for determining when to obtain a credit report or credit score shall:

(1) Prohibit obtaining a credit report or credit score based wholly or partly on race, color, creed, sex, religion, national origin, place of residency, blindness, or any other physical handicap or disability of an applicant or insured;

(2) Prohibit obtaining a credit report or credit score for any arbitrary, capricious, or unfairly discriminatory reason;

(3) Require the decision to obtain a credit report or credit score to be reasonably related to the insurer's economic and business purposes; and

(4) Otherwise comply with Insurance Article, § 27-501, Annotated Code of Maryland.

C. Renewal Underwriting Program.

If an insurer uses credit criteria or a credit score for initial underwriting and has a renewal underwriting program to evaluate an insured's eligibility for continued coverage or continued placement in a tier, the insurer shall, at the time of renewal underwriting, obtain a current credit report or credit score:

(1) For each insured that is subject to the renewal underwriting program;

or

(2) In accordance with a rating rule approved by the Commissioner.

D. Filing Information With the Commissioner.

At the request of the Commissioner, an insurer shall file with the Commissioner a copy of its written standard pursuant to Insurance Article, §27-501(h)(2), Annotated Code of Maryland.

E. Confidentiality of Information.

(1) An insurer that submits a written standard to the Commissioner under §D of this regulation may, under Insurance Article, §27-501(h)(4), Annotated Code of Maryland, request a finding by the Commissioner that its written standard be considered a trade secret or confidential commercial information under State Government Article, §10-617(d), Annotated Code of Maryland.

(2) A written standard that is the subject of a confidentiality request shall be considered confidential pending review by the Commissioner.

(3) A finding that information submitted to the Commissioner pursuant to this chapter is a trade secret or confidential commercial information under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland:

(a) Applies only to an application for inspection of a public record under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland;

(b) Does not apply to a hearing to determine whether an insurer has violated Insurance Article, §27-501, Annotated Code of Maryland; and

(c) Does not excuse an insurer from providing any information necessary to meet its burden of persuasion at the hearing in accordance with Insurance Article, §27-501(g), Annotated Code of Maryland.

(4) If the Commissioner finds that a written standard is not a trade secret or confidential commercial information, the insurer that submitted the written standard may:

(a) Withdraw the written standard; or

(b) Request a hearing on the Commissioner's finding pursuant to Insurance Article, §2-201(a)(2)(ii), Annotated Code of Maryland.

(5) An insurer may not use a written standard that has been withdrawn.

## **.05 Use of Credit Information in Underwriting.**

### **A. In General.**

(1) If an insurer, or an agent on behalf of an insurer, uses credit criteria or a credit score wholly or partly as a reason to cancel or refuse to renew coverage or to



refuse to underwrite a particular insurance risk or class of risk, the credit criteria or credit score shall be established and used in a manner that:

(a) Is not based wholly or partly on race, color, creed, sex, religion, national origin, place of residency, blindness, or any other physical handicap or disability of an applicant or insured;

(b) Is not arbitrary, capricious, or unfairly discriminatory;

(c) Is reasonably related to the insurer's economic and business purposes; and

(d) Otherwise complies with Insurance Article, § 27-501, Annotated Code of Maryland.

(2) If an insurer or agent cancels or refuses to renew a policy or refuses to underwrite a risk based wholly or partly on information contained in a credit report or credit score that the insurer or qualified agent knows is inaccurate or incomplete, the action of the insurer or agent is deemed to be:

(a) Arbitrary, capricious, and unfairly discriminatory;

(b) Not reasonably related to the insurer's economic and business purposes; and

(c) In violation of this regulation.

#### B. Filing Information With the Commissioner.

On request of the Commissioner, an insurer that uses credit criteria or a credit score wholly or partly as a reason to cancel or refuse to renew coverage or to refuse to underwrite a particular insurance risk or class of risk, or another person authorized by the

Commissioner to act on behalf of the insurer, shall file with the Commissioner under Insurance Article, §27-501(h)(2), Annotated Code of Maryland:

(1) The characteristics or factors from a credit report that are used as credit criteria or used in determining a credit score;

(2) In the case of credit scoring, the algorithm, computer program, model, or other process that is used in determining a credit score, along with the underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining a credit score; and

(3) Any underwriting guidelines relating to the use of the credit criteria or credit scores, along with all appropriate supporting material for the use of the guidelines in accordance with Insurance Article, §27-501, Annotated Code of Maryland and *Crumlish v. Insurance Commissioner*, 70 Md. App. 182, 520 A. 2d 738 (1987).

#### C. Confidentiality of Information.

(1) An insurer or other person that submits information to the Commissioner under §B of this regulation may, under Insurance Article, § 27-501(h)(4), Annotated Code of Maryland, request a finding by the Commissioner under State Government Article, § 10-617(d), Annotated Code of Maryland that an underwriting guideline or an algorithm, computer program, model, or other process that is used in determining a credit score is a trade secret or confidential commercial information.

(2) An underwriting guideline or an algorithm, computer program, model, or other process that is the subject of a confidentiality request shall be considered confidential pending review by the Commissioner.

(3) A finding that information submitted to the Commissioner pursuant to this chapter is a trade secret or confidential commercial information under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland:

(a) Applies only to an application for inspection of a public record under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland;

(b) Does not apply to a hearing to determine whether an insurer has violated Insurance Article, §27-501, Annotated Code of Maryland; and

(c) Does not excuse an insurer from providing any information necessary to meet its burden of persuasion at the hearing in accordance with Insurance Article, §27-501(g), Annotated Code of Maryland.

(4) If the Commissioner finds that any information submitted under §B of this regulation is not a trade secret or confidential commercial information, the insurer or other person that submitted the information may:

(a) Withdraw the information; or

(b) Request a hearing on the Commissioner's finding pursuant to Insurance Article, §2-201(a)(2)(ii), Annotated Code of Maryland.

(5) An insurer may not use an underwriting guideline or an algorithm, computer program, model, or other process that has been withdrawn.

#### **.06 Use of Credit Information in Rate Making.**

##### **A. Scope.**

This regulation applies to an insurer with more than one tier.

B. In General.

(1) If an insurer uses credit criteria or a credit score as part of the insurer's rate-making standards, the credit criteria or credit score shall be established and used in a manner that:

(a) Does not result in rates that are excessive, inadequate, or unfairly discriminatory; and

(b) Otherwise complies with Insurance Article, § 11-306, Annotated Code of Maryland.

(2) If an insurer increases a premium based wholly or partly on information contained in a credit report or credit score that the insurer knows is inaccurate or incomplete, the resulting rate is deemed to be:

(a) Excessive and unfairly discriminatory; and

(b) In violation of this regulation.

C. Inclusion of Information in Rate Filing.

An insurer that uses as part of its rating methodology credit criteria or a credit score for determining placement in a tier or as a rating factor, or another person authorized by the Commissioner to act on behalf of the insurer, shall file with the Commissioner as part of the insurer's rate filing under Insurance Article, § 11-307, Annotated Code of Maryland:

(1) The rate-related underwriting rule included in the definition of supplementary rate information in Insurance Article, § 11-101(e), Annotated Code of Maryland;

- (2) The credit criterion or factor associated with the tier rating factor;
- (3) The tier rating factor;
- (4) In the use of credit scoring, the algorithm, computer program, model, or other process that is used in determining a credit score; and
- (5) The underlying support, including statistical validation, for the development of the standards listed in §C(1) - (4) of this regulation.

D. Confidentiality of Information.

- (1) An insurer or other person that submits an algorithm, computer program, model, or other process that is used in determining a credit score to the Commissioner under §C of this regulation may, under Insurance Article, §11-307(c)(3), Annotated Code of Maryland, request a finding by the Commissioner under State Government Article, § 10-617(d), Annotated Code of Maryland that the algorithm, computer program, model, or other process is a trade secret or confidential commercial information.
- (2) An algorithm, computer program, model, or other process that is the subject of a confidentiality request shall be considered confidential pending review by the Commissioner.
- (3) A finding that information submitted to the Commissioner under this chapter is a trade secret or confidential commercial information under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland:

(a) Applies only with respect to an application for inspection of a public record under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland; and

(b) Does not apply to a hearing to determine whether an insurer has violated Insurance Article, §11-306, Annotated Code of Maryland.

(4) If the Commissioner finds that any information filed under §C of this regulation is not a trade secret or confidential commercial information, the insurer or other person that submitted the information may:

(a) Withdraw the information; or

(b) Request a hearing on the Commissioner's finding pursuant to Insurance Article, §2-210(a)(2)(ii), Annotated Code of Maryland.

(5) An insurer may not use an algorithm, computer program, model, or other process that has been withdrawn.

**.07 Cancellation or Nonrenewal of Policies - Statement of Actual Reason - Review of Action - Right of Protest.**

**A. Information Required.**

When an insurer cancels or refuses to renew a policy or binder subject to Insurance Article, §§ 27-601 and 27-602, Annotated Code of Maryland or cancels, refuses to renew, or reduces coverage under a policy or binder subject to Insurance Article, § 27-605, Annotated Code of Maryland based wholly or partly on a credit criterion or credit score, the insurer shall provide the insured with:

(1) A reason in the statement of actual reason that is sufficiently clear and specific so that an insured of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry in accordance with Insurance Article, §§ 27-602 and 27-605, Annotated Code of Maryland; and

(2) The information needed to obtain a copy of the insured's credit report as required by the federal Fair Credit Reporting Act.

#### B. Generalized Terms Not Sufficient.

(1) The use of generalized terms such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirements of Insurance Article, § 27-602 or § 27-605, Annotated Code of Maryland.

(2) A reason provided in the statement of actual reason is sufficiently clear and specific if it identifies the primary attributes or characteristics of the insured's credit history that led to the insurer's decision.

#### C. Review of Action.

(1) If an insured believes that a cancellation of, refusal to renew, increase in premium for, or reduction in coverage under a policy or binder subject to Insurance Article, §§27-601 and 27-602, Annotated Code of Maryland violates Regulation .04, .05, or .06 of this chapter, the insured may request the Commissioner to review the action of the insurer.

(2) In the case of a cancellation of or refusal to renew a policy, the policy remains in effect under Insurance Article, § 27-501, Annotated Code of Maryland until a finding is issued under Insurance Article, § 27-505, Annotated Code of Maryland if the:

(a) Insured asks the Commissioner to review the cancellation or refusal to renew before the effective date of the termination of the policy; and

(b) Commissioner begins action to issue a finding under Insurance Article, § 27-505, Annotated Code of Maryland.

**D. Right of Protest - Private Passenger Motor Vehicle Insurance.**

(1) If an insured believes that a cancellation of, refusal to renew, increase in premium for, or reduction of coverage under a policy or binder subject to Insurance Article, § 27-605, Annotated Code of Maryland violates Regulation .04, .05, or .06 of this chapter, the insured may protest the action of the insurer under Insurance Article, § 27-605, Annotated Code of Maryland.

(2) A timely filed protest under Insurance Article, § 27-605, Annotated Code of Maryland stays the proposed action of the insurer pending a final determination by the Commissioner.

**E. Other Information.**

The information that an insurer or agent is required to provide by this regulation is in addition to any other information required to be provided by any other provision of law.

**.08 Denial of Insurance.**

**A. Information Required.**

When an insurer, or an agent on behalf of an insurer, denies insurance to an applicant based wholly or partly on information in a credit report or on a credit score, the insurer or agent shall comply with:



(1) Any notice requirements of Commercial Law Article, §14-1212,  
Annotated Code of Maryland; and

(2) The federal Fair Credit Reporting Act.

B. Review of Action.

If an applicant believes that a denial of insurance violates Regulation .04, .05, or  
.06 of chapter, the insured may request the Commissioner to review the denial of  
insurance.

STEVEN B. LARSEN  
Insurance Commissioner